given by the prosecution, there was no case for the accused to answer. The learned Magistrate accepted that submission and acquitted the accused without calling upon him for his defence.... There is only one point in these proceedings, and that is the point which was the subject matter of Mr. Yeo's submission at the trial. The question is: Where does the onus of proof lie in order to establish that a person is, or is not, as the case may be, a person required to be registered under these Regulations?... Does the onus lie upon the prosecution to prove that any particular person who fails or refuses to produce an identity card on demand by a Police Officer is not a member of one of the excepted categories, or does the onus lie upon the person concerned to prove that he is an excepted person? In my opinion, the effect of section 106 of the Evidence Ordinance is quite clear: 'When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him,' and then follows the very well-known illustration (b) — the railway ticket illustration. To interpret that section properly, I think it is essential to concentrate upon what was meant by the word 'especially'. It does not say " 'exclusively,' or 'solely,' within the knowledge of any person." And, as I see it, the effect of the word 'especially' is this: That if it is an easy matter for the person concerned to prove a fact the proof of which by the prosecution would present the prosecution with inordinate difficulties, then ordinary common sense demands that the balance of convenience should be in favour of the prosecution."

It would appear that all these three decisions were based on the application of section 106 of the Evidence Ordinance.

Here the appellant was accused of an offence of having in his possession prohibited documents without lawful excuse. If he had a lawful excuse, that fact would be especially within his knowledge. Section 106 in the clearest language provides that the burden of proving that fact is on the appellant. It follows therefore that it is not for the prosecution to prove the absence of lawful excuse.

In our opinion section 105 of the Evidence Ordinance also is relevant. The presence of lawful excuse brings the case of the appellant within an exception in section 25(1) of the Act, the law defining the defence. By that section, the burden of proving that circumstance is upon the appellant and the court shall presume the absence of such circumstance.

Commenting on the corresponding provision of the Indian Evidence Act, Beaumont C.J. in *Emperor* v. *Dahyabhai Savchand Jhaveri*[8] said:

"It seems to me that (the section) is a general provision which imposes the burden of bringing himself within an exception upon the person who relies on the exception."

Indeed the illustrations given by the Ordinance to the section vividly show by necessary analogy that it is for the appellant in this case to show that he had a lawful excuse for having in his possession these prohibited documents.

We are of the opinion that the fact that section 57 of the Internal Security Act by express words places the onus of proving the presence of lawful excuse on a person charged with having in his possession without lawful excuse fire-arms, *etc.*, does not affect the answer to the question posed in this reference, because in our view those express words were put in by the legislature *ex abundanti cautela.* In the result, the order of the High Court dated the 19th day of August, 1971 directing that the case be sent back to the learned magistrate to call on the accused for his defence is affirmed.

Reference answered.

Solicitors: *Tay Leong Siak & Co.*

LEE SOO CHUAN v. LAI AH YAN & ANOR.

[F.C. (Suffian Ag. L.P., Gill and Ong Hock Sim F.JJ.) May 4, 1972]

[Kuala Lumpur — Federal Court Civil Appeal No. 105 of 1971]

Practice and Procedure — Appeal from court of senior inspector of mines — Mode of — Wrong procedure adopted — Effect of — Subordinate Courts Rules, 1950, O. 39 — R.S.C. 1957, O. 59 rr. 1 and 2, O. 70.

In this appeal, there were two questions to be determined: (a) what is the procedure to be adopted on an appeal from a decision of the senior inspector of mines; and (b) if the respondents were right that the procedure should have been by way of a notice of appeal followed by a memorandum of appeal, could the court treat the originating motion, the procedure adopted by the appellants, as an irregularity?

Held: allowing the appeal: (1) an appeal from the decision of a senior inspector of mines must be brought in the same way as a civil appeal from a sessions court or magistrate's court, in accordance with the procedure laid down in O. 39 of the Subordinate Courts Rules, 1950, followed by the procedure contained in O. 59 rr. 1 and 2 of the Rules of the Supreme Court, 1957;

(2) the originating motion was not a nullity but a mere irregularity which could be cured under R.S.C. 1957, O. 70. Therefore, the order of the court below would be set aside, with the exception of costs, and substituted by an order that the originating motion was to stand as a notice of appeal as well as a record of appeal. In the result, a copy of this order was to be served by the appellant on the senior inspector of mines and a deposit of $150 by way of security for the costs of the appeal was to be lodged in his court.

Necessity to observe the Rules of Court emphasised.

[Editorial Note: Reference may usefully be made to *Lee Soon Chuan* v. *Lai Ah Yan & Anor.* [1971] 2 M.L.J. 275.]

Cases referred to:-

(1) *In re application of (1) Chong Fye Lee and (2) Toong Hing Loong Tin Mining Co. Ltd.* [1965] 1 M.L.J. 29.

(2) *Pontin & Anor.* v. *Wood* [1962] 1 All E.R. 294, 297.

(3) *Sundaram* v. *Chew Choo Khoon* [1968] 2 M.L.J. 40.

FEDERAL COURT.

A. Sivalingam (*V. P. Nathan* with him) for the appellant.

Morris Edgar (*T. K. Tang* with him) for the respondents.

Gill F.J.: Lai Ah Yan (f) and Chiang Peng Lam alias Chiang Kok Peng are the registered lessees of the land held under mining certificate No. 1517 for lots 3234 and 9648 in the mukim of Petaling in the district of Kuala Lumpur. Their predecessor in title, one Yap Shak Lin had sub-leased the said mining land to Lee Soo Chuan on 23rd September, 1967.

On 4th December, 1970 the lessees lodged a memorandum in writing, under section 99 of the Min-

ing Enactment (F.M.S. Cap. 147) at the office of the senior inspector of mines, Kuala Lumpur, complaining, *inter alia*, that the sub-lessee had not, contrary to the provisions of section 16(iii)(a) of the Mining Enactment, commenced mining operations on the mining lot within a period of one year from the date of issue of the sub-lease, and seeking an order for the cancellation of the said sub-lease.

The complaint was registered as civil action No. 3 of 1970 in the court of the senior inspector of mines at Kuala Lumpur, in which Lai Ah Yan (f) and Chiang Peng Lam were described as the complainants and Lee Soo Chuan as the respondent. As the action was in the nature of a civil proceeding, it will be more appropriate for me to refer to the parties hereafter as the plaintiffs and the defendant respectively in the action.

The defendant filed a defence to the action to the effect that he would have worked the mining land but for the breach by Yap Shak Lin of clause 5 of the agreement entered into between himself and the said Yap Shak Lin dated 8th August, 1966.

On 21st May, 1971 the plaintiffs filed a further complaint stating that their mining certificate was due to expire on 18th September, 1971 and that as the sub-lessee was unable to start the mine, it was only fair that the sub-lease be cancelled so that they could either work the mining land themselves or sub-lease it to the adjoining mining company for mining.

On the case coming up for hearing on 17th June, 1971 the senior inspector of mines made a decision whereby it was ordered that the sub-lease over the mining certificate No. 1517 be cancelled.

On 9th July, 1971 the defendant took out an originating motion in the High Court at Kuala Lumpur, being Originating Motion No. 28 of 1971, for an order that the decision of the senior inspector of mines Selangor given on 17th June, 1971 in Civil Suit (Selangor) No. 3 of 1970 in the senior inspector of mines' court at Kuala Lumpur be cancelled or set aside on the grounds mentioned therein.

The subject matter of the originating motion was stated in the title to be:

"In the matter of Section 107 of the Mining Enactment Cap. 147

AND

In the matter of an appeal from the decision of the Senior Inspector of Mines, Kuala Lumpur in Kuala Lumpur Senior Inspector of Mines' Court Civil Suit No. 3 of 1970 between Lai Ah Yan (f) and Chiang Peng Lam alias Chiang Kok Peng and Lee Soo Chuan."

The parties to the motion were stated to be the defendant as the appellant and the plaintiffs as the respondents.

On 11th August, 1971 the respondents took out a notice of motion for an order that the originating motion commencing the proceedings in the High Court by way of appeal against the decision of the senior inspector of mines and all subsequent proceedings therein be set aside. This notice of motion came up for hearing on September 20, 1971 before Abdul Hamid J., who ruled that proceeding by way of originating motion was not the proper procedure to adopt on an appeal from the decision of the senior inspector of mines, and accordingly made an order that the originating motion and all subsequent proceedings therein be set aside.

This appeal has been brought against that order of September 20, 1971 whereby the originating motion was set aside.

As stated by counsel for the defendant/appellant the two questions to be decided in this appeal are:

(1) What is the procedure to be adopted on an appeal from a decision of the senior inspector of mines?

(2) If the respondents are right that the procedure should have been by way of a notice of appeal followed by a memorandum of appeal, can the court treat the originating motion as an irregularity?

With regard to the first question, it is to be observed that appeals to the High Court from subordinate courts and statutory bodies are governed by Order 59 of the Rules of the Supreme Court, 1957 as stated in the general heading of that order.

As regards appeals from statutory bodies, the procedure is contained in rule 13 of Order 59 of the Rules of the Supreme Court, 1957. This rule reads —

"(1) Where under any written law an appeal lies from any decision of any person or body of persons to the High Court or to the Supreme Court such appeal shall be made to the High Court in the State where the decision was given by motion setting out the grounds of appeal, supported by affidavit and, if the Court so directs at the hearing, by oral evidence.

(2) Unless otherwise provided by any written law, such appeal shall be made within one month from the date on which the decision was given or the date on which such decision was notified to the person appealing, whichever is the later date.

(3) Unless otherwise provided by any written law, notice of the motion shall be served on the respondent in such appeal or where the respondent is a body of persons, on the secretary, registrar or such other officer of that body of persons."

"Person" is defined in section 2 of the Interpretation and General Clauses Ordinance, 1948 to include "any body of persons, corporate or unincorporate". The *Shorter Oxford* English Dictionary defines "a person in law" as "a human being or body corporate or corporation, having rights or duties recognised by law".

The procedure in relation to appeals from a subordinate court is to be found in Order XXXIX of the Subordinate Courts Rules, 1950 read in conjunction with rules 1 and 2 of Order 59 of the Rules of the Supreme Court, 1957. The steps required to be taken under Order XXXIX are —

(1) The party wishing to appeal must give a notice of appeal to the Court appealed from in Form 39 in the First Schedule to the Rules and serve it on all parties directly affected by the appeal or their respective solicitors, within 14 days from the day on which the decision appealed from was pronounced.

(2) The Court must thereupon supply to the appellant, upon payment of the fee therefor, a certified copy of the judgment, or, in case no written judgment has been delivered, of the grounds of decision, and notify the appellant as soon as such certified copy is ready.

(3) Within 14 days from the receipt of such notification the appellant must, unless otherwise ordered by the Court, deposit

in the Court appealed from a sum which in the opinion of the Court will cover the cost of preparing a sufficient number of copies of the appeal record for the use of the High Court and the parties to the appeal, and lodge in the Court appealed from a sum of $150, or such lesser sum as the Court may in any case direct, by way of security for the costs of the appeal.

(4) When the above requirements have been complied with or the High Court has allowed the appellant to appeal as a poor person, the Court must prepare the requisite number of copies of the appeal record to consist of the relevant pleadings, the notes of evidence, the grounds of judgment, the decision, the notice of appeal, and all such documentary exhibits and other documents as the parties shall consider relevant for the purposes of appeal.

(5) As soon as the appeal record is ready the Court must serve on the appellant a notice to that effect in Form 40 in the First Schedule to the Rules. Upon request by the appellant and upon payment by him of the sum sufficient to defray the cost of preparing the appeal record, the Court must —

(a) supply the appellant with a copy of the appeal record and sufficient additional copies for service on the respondent or respondents, and

(b) forward to the appropriate Assistant Registrar of the High Court the remaining copies of such record, having endorsed on one of such copies the date of service of the notice in Form 40.

The procedure thereafter is governed by rules 1 and 2 of Order 59 of the Rules of the Supreme Court, 1957, which read as follows:—

"1. On receiving an appeal record under Order XXXIX of the Subordinate Courts Rules, 1950, the Assistant Registrar shall enter the appeal in a list of appeals from Subordinate Courts.

2. (1) The appellant shall, within fourteen days from the date of service on him of the notice referred to in Order XXXIX, rule 3 sub-rule (2) of the Subordinate Courts Rules, 1950, or within such extended time as the High Court may allow, file in the High Court in duplicate a memorandum of appeal in Form 23 in the First Schedule hereto.

(2) The appellant shall within the like period serve each respondent with a copy of such memorandum and a copy of the appeal record."

It is to be observed that the High Court comes to know about the appeal only when the appeal record is lodged in its registry.

Needless to say, it was under the provisions of rule 13 of Order 59 of the Rules of the Supreme Court, 1957 that the defendant brought his appeal by way of an originating motion. In setting aside the originating motion, the learned judge in the court below took the view that the decision of the senior inspector of mines was in fact a decision of a "subordinate court" as defined in section 3 of the Courts of Judicature Act, 1964 to mean —

"any inferior court from the decision of which by reason of any written law there is a right of appeal to any High Court and means in relation to any High Court any such Court as by any written law has jurisdiction within the local jurisdiction of such High Court."

Before I come to the reasons of the learned judge for his decision, it will be useful to state the powers of the senior inspector of mines. Section 96(i) of the Mining Enactment (F.M.S. Cap. 147) provides:

"Every officer duly appointed to exercise the powers of Senior Inspector shall be vested by virtue of such appointment with the powers of a Magistrate of the First Class for the purpose of compelling the attendance of witnesses, of maintaining order in his Court and otherwise of carrying into effect the provisions of this Enactment."

Section 97(i) of the Enactment says:

"A Senior Inspector may enquire into and decide all disputes between occupiers of mining lands, either amongst themselves or in relation to themselves and third parties, concerning any of the matters hereinafter mentioned, and shall have power to make any order which may be necessary for the purpose of giving effect to his decisions and to order the payment by any party to the dispute of such compensation, not exceeding one thousand dollars, to any other party as may be reasonable...."

Section 97(ii)(b) provides that the senior inspector shall have power in his discretion to cancel a sub-lease upon proof to his satisfaction that the sub-lessee has not worked the land in accordance with clause 4 of the sub-lease in Schedule X to the Enactment. It is also to be observed that sections 100, 101, 103 and 136(iv) speak of a senior inspector's court.

The reasons by the learned judge for his decision are set out in his grounds of judgment in such lucid terms that it would be more appropriate for me to set them out in full rather than to make an attempt to paraphrase them. This is what he says:

"In view of the constant reference that is made to the senior inspector of mines' court as a 'mining court', is would seem to me the object of the Enactment is to establish under the Enactment, an inferior court equivalent to that of the court of a first class magistrate except that it has powers to deal with only specific matters connected with mining operations and land leased for mining. Section 97 (ii) of the Enactment vests the senior inspector of mines with discretionary power to cancel a sublease. Before making a decision, he is required to hold an enquiry in the manner provided by the Enactment. A complaint when filed must be in writing. The senior inspector of mines shall then issue summons, stating the nature of the complaint and the place of the enquiry.

He may summon persons whose interests may be affected and is vested with the powers of a first class magistrate for the purpose of compelling the attendance of witnesses, maintaining order in his court and for otherwise carrying into effect the provisions of the Enactment. At the hearing of the complaint, the parties will state their case and adduce evidence. At the conclusion of the enquiry, the senior inspector of mines shall give his decision. The Enactment also vests the senior inspector of mines with the power, at any time before he delivers judgment, to order any case pending in his court to be transferred to the High Court (s. 101). The High Court may on the other hand, transfer a case from the senior inspector of mines' court to its court (s. 102). The Enactment also enables a civil court to transfer its case to the senior inspector of mines' court (s. 103). Apart from these provisions, the Enactment also requires a senior inspector of mines to keep record and notes of evidence and confers on persons interested in any disputed decision or order of the senior inspector of mines, the right to obtain copy of such record and notes upon payment of a prescribed fee (s. 105). Amongst the other provisions, section 106 of the Enactment provides for the enforcement of the senior inspector of mines' decree by a civil court (s. 106) and section 107 provides that an appeal shall lie to the High Court from the decision of the senior inspector of mines.

The object of the Enactment to establish an inferior court comparable to that of the court of a first class magistrate is further illustrated by section 136 of the Enactment which confers jurisdiction on the senior inspector of mines to try certain offences and impose certain punishment. An appeal against the decision of the senior inspector of mines shall lie to the High Court from any judgment or sentence of a senior inspector of mines and such appeal shall be proceeded with in the manner provided by Chapter XXX of the Criminal Procedure Code, *i.e.* the procedure governing the appeal from the decision of a Magistrate or a president sessions court to a High Court.

In the light of the various provisions which I have referred to above, I am of the view that the senior inspector of mines not only possesses the power of a first class magistrate for

the purpose of compelling the attendance of witnesses, maintaining order in his Court but also for otherwise carrying into effect the provisions of the Enactment. In dealing with the cases that the Enactment requires him to hear and decide, the senior inspector of mines follows the procedure which is normally prescribed for an inferior court."

With the above reasoning of the learned judge I respectfully agree.

An alternative argument advanced in support of the learned judge's decision by Mr. Morris Edgar, counsel for the respondents to this appeal, is that Order 59, rule 13 of the Supreme Court Rules speaks of "any decision of any person or body of persons", whereas the decision appealed from in this case is not that of the senior inspector of mines as a person but a decision of the "senior inspector's court". With respect, I do not think there is much force in that argument, because just as a decision of a magistrate's court may rightly be regarded as the decision of the magistrate presiding in that court, similarly the decision of the senior inspector's court may be treated as the decision of the senior inspector of mines. But for the definition of "subordinate court" in section 3 of the Courts of Judicature Act, 1964, which I have quoted earlier, the mention of "senior inspector's court" in a number of sections in the Mining Enactment and the fact that by virtue of his appointment a senior inspector of mines is vested with the powers of a magistrate of the first class, it could perhaps be successfully argued that the decision of a senior inspector of mines would be that of a person as contemplated in Order 59, rule 13 of the Rules of the Supreme Court, 1957.

The main argument put forward by counsel for the appellant in support of his contention that the appeal was rightly brought by way of originating motion under Order 59, rule 13 is that as the word "court" is defined in Order II, rule 1(1) of the Subordinate Courts Rules, 1950 to mean "a sessions court or a magistrate's court and the president of a sessions court or a magistrate", Order XXXIX of the said Rules applies only in the case of appeals from either of those two courts or their presiding officers, and consequently rules 1 and 2 of Order 59 of the Supreme Court Rules apply only to such appeals. It is further argued that "Subordinate Court" is defined in Order 71 of the Rules of the Supreme Court to mean "a court established under section 3 of the Courts Ordinance, 1948", the relevant part of which reads:—

"In addition to the Supreme Court there shall be established the following Courts for the administration of civil and criminal law in the Federation:

(a) Sessions Courts;

(b) Magistrates' Courts;

(c) Penghulus' Courts."

I do not think it is open to me to accept those arguments in view of the definition of "subordinate court" in section 3 of the Courts of Judicature Act, 1964, to which I have already referred, which must surely override the definition in section 3 of the Courts Ordinance, 1948. In view of the wider meaning given to the words "subordinate court" in this later Enactment, the question raised by counsel for the appellant as to what would have been the proper procedure in relation to appeals from the decision of a senior inspector of mines before the coming into force of the Judicature Act, 1964 does not call for any consideration. In this connection, I would adopt with respect what was held by Azmi J. (as he then was) in *In re applications of (1) Chong Fye Lee & (2) Toong Hing Loong Tin Mining Co. Ltd.*[1] when he said:

"A warden of mines holding inquiries under the Mining Enactment is an inferior court within the meaning of the words given in the definition of 'Subordinate Court' in section 3 of the Courts of Judicature Act, 1964."

I must therefore hold that an appeal from the decision of a senior inspector of mines must be brought in the same way as a civil appeal from a sessions court or a magistrate's court, that is, in accordance with the procedure laid down in Order XXXIX of the Subordinate Courts Rules, 1950 followed by the procedure contained in Order 59, rules 1 and 2 of the Rules of the Supreme Court, 1957.

Having rejected the contention of counsel for the appellant that an appeal from the decision of a senior inspector of mines falls properly within the ambit of Order 59, rule 13 of the Rules of the Supreme Court, 1957, I have next to consider the question as to whether the originating motion herein is a nullity or is a mere irregularity which can be cured under Order 70 of the Rules of the Supreme Court, 1957.

As to the effect of Order 70, Wallace, J. of the Supreme Court of New South Wales in an article in the *Australian Law Journal*, Vol. 35, part 4, quoted the following words attributed to Bowen, L.J.: —

"It may be asserted without fear of contradiction that it is not possible in the year 1887 for an honest litigant in Her Majesty's Supreme Court to be defeated by any mere technicality, any slip, any mistaken step in his litigation."

These words were cited with approval by Holroyd Pearce, L.J. in *Pontin & Anor.* v. *Wood.*[2] In *Sundaram* v. *Chew Choo Khoon*[3] an appeal from the decision of the Collector of Land Revenue was brought by way of a notice of motion. Chang Min Tat J. held that as the appeal from the decision of such a statutory body was an origination and not a continuation of judicial process, it should have been brought by way of an originating motion, but that the defect occasioned by the lodging of the notice of motion was a mere irregularity curable under Order 70. The application to set aside the notice of motion was therefore dismissed but costs were awarded to the respondent/applicant.

Sundaram's case[3] was cited to the learned judge in the court below, but his Lordship expressed the opinion that it could not apply to the present case. With great respect to the learned judge, the application of that case as to whether this is also a case of mere irregularity which can be similarly cured seems obvious. Section 107(ii) of the Mining Enactment requires an appeal to be brought before the expiration of 30 days from the date of a senior inspector's decision. The originating motion in the instant case was filed within that period. In view of what I have already said, the appeal should have been brought by way of a notice of appeal to the senior inspector of mines and a copy of such notice

should have been served on the other parties to the dispute. Can it be said that the bringing of the appeal by an originating motion and not by a notice of appeal, when the originating motion can itself be treated as a notice of appeal, occasioned any prejudice to the applicant which could not be compensated by costs? I do not think so. I must therefore hold that the originating motion here is not a nullity but an irregularity which can be cured.

It is to be observed that the subject matter of the originating motion is stated to be an appeal under section 107 of the Mining Enactment and in it are set out six grounds on which it was sought to appeal from the decision of the senior inspector of mines. To the affidavit in support of the originating motion are annexed copies of the pleadings in the senior inspector's court, copies of a large number of documents which were sought to be put in evidence but were rejected as being irrelevant, and a copy of the notes of the proceedings before the senior inspector in which are set out his judgment in brief and the order which he made. It would seem clear from these notes of proceedings that no evidence was called by either party and that the case was decided on the submissions made by their respective counsel. There are thus present in the originating motion and the supporting affidavit all the constituents of a proper appeal record, although on the hearing of the appeal the court may well take the view that copies of the documents in the record which were not allowed to be put in as exhibits should not be considered for the purpose of the appeal.

Counsel for the respondent referred to a number of old cases in which appeals from the mines court were registered and numbered in the High Court as civil appeals, which was not done in this case. That, in my opinion, is a defect which can be easily cured by enclosing the originating motion in an appropriate civil appeal docket file with the next consecutive appeal number and by an endorsement on the register of originating motions to the effect that the present originating motion has been re-numbered as a civil appeal. The originating motion can also be treated as a notice of appeal in lieu of the appropriate notice under Order XXXIX of the Subordinate Courts Rules, 1950.

In the result, I would allow this appeal, setting aside the order of the court below except in so far as it relates to costs and substituting therefor an order that the originating motion do stand as a notice of appeal as well as a record of appeal. There will also be an order that the costs of this appeal be paid by the appellant. In order to complete all the formalities required to be observed in relation to an appeal from a subordinate court there will be a further order that a copy of this order be served by the appellant on the senior inspector of mines and that a deposit of $150 by way of security for the costs of the appeal be lodged in his court.

Before concluding the matter I must emphasise that the Rules of Court are meant to be obeyed Their non-observance will not necessarily nullify the proceedings, as in the present case, but the party choosing to adopt the wrong procedure is always placed in the unenviable position of having to pay all the costs to have the matter set right because of the mistakes of his legal advisers.

Suffian Ag. L.P. and **Ong Hock Sim F.J.** concurred.

Appeal allowed.

Solicitors: *Richard Talalla & Co.; Cumarasami, Tang & Co.*

THE TITULAR ROMAN CATHOLIC BISHOP, KUALA LUMPUR v. CHAIRMAN, KLANG TOWN COUNCIL

[F.C. (Suffian, Gill and Ong Hock Sim F.JJ.) May 4, 1972]

[Kuala Lumpur — Federal Court Civil Appeal No. 120 of 1971]

Local Government — Rating — Land holding comprised of church, parochial house and parish hall — Exclusively used for the advancement of religion, education and charity — Whether property exempt from payment of rates — Town Boards Enactment (F.M.S. Cap. 137) s. 33.

Practice and Procedure — Jurisdiction — Appeal from High Court — Town Boards Enactment (F.M.S. Cap. 137), s. 44(i).

This was an appeal from a decision of the High Court, affirming a decision of the Klang Town Council, to levy rates on church property of which the registered proprietor is the appellant.

The appellant contended that this holding was exempted from payment of rates under section 33 of the Town Boards Enactment.

The Town Council made their decision under the Town Boards Enactment (Cap. 137). In accordance with section 44 of the Enactment, the appellant appealed to the High Court, which decided in favour of the respondent.

The appellant further appealed to the Federal Court.

Held, striking out the appeal: the Federal Court had no jurisdiction to entertain it as section 44(iv) of the Town Boards Enactment expressly provides that the decision of the High Court "shall be final and conclusive", and paragraph (d) of section 68(1) of the Courts of Judicature Act 1964, provides that no appeal shall be brought to the Federal Court "where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final."

Cases referred to:-

(1) *The Commissioners for Special Purposes of the Income Tax* v. *Pemsel* [1891] A.C. 531.

(2) *Chesterman & Ors.* v. *Federal Commissioner of Taxation* (1925) 37 C.L.R. 317.

[Authority cited other than those mentioned in the judgment: *Tunku Abdullah* v. *Ali Amberan* [1971] 1 M.L.J. 25.]

FEDERAL COURT.

R. T. S. Khoo for the appellant.

D. P. Vijendran for the respondent.

In the court below, *L. Cheah* appeared for the appellant, and *D. P. Vijendran* appeared for the respondent. The following judgment was delivered in the High Court by Yong J. on November 11, 1971.